


<p>Department of Public Safety and Correctional Services</p>  <p>Internal Investigative Unit Procedures</p>	<p><b>Procedure Number: A01.A.09.006.003/IIU.220.0004</b></p>
	<p><b>Title: Witness Evidence Guidelines</b></p>
	<p><b>Effective Date: December 04, 2007</b></p>
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**.01 Purpose.**

This document establishes policy and procedural guidelines for obtaining evidence from witness by a Department of Public Safety and Correctional Services (Department) Internal Investigative Unit (IIU) investigator.

**.02 Scope.**

This directive applies to an IIU investigator.

**.03 Policy.**

- A. The Director shall establish uniform procedural guidelines for an investigator to employ when collecting and preserving witness evidence intended to:
  - (1) Increase the amount of witness evidence obtained;
  - (2) Improve accuracy and reliability of witness evidence;
  - (3) Improve the ability of the criminal justice system to evaluate the strength and accuracy of witness evidence to assist with a proper resolution of the incident.
- B. An investigator shall comply with statute, regulation, and judicial rule when obtaining evidence from a witness.

**.04 Authority/Reference.**

- A. Correctional Services Article, §10-701, Annotated Code of Maryland.
- B. Public Safety Article, §3-505, Annotated Code of Maryland.
- C. *Witness Evidence: A Guide for Law Enforcement*, National Institute of Justice Research Report (1999).
- D. Secretary's Department Directive 04-2005 dated March 10, 2005.

**.05 Definitions.**

A. In this document, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Composite” means an image generated from a verbal description of an individual by an artist or other technology to formulate the image.
- (2) “Director” means the Director of the IIU.
- (3) “Investigator” means a Department employee permanently assigned to, or on special assignment to assist, the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.
- (4) Lineup.
  - (a) “Lineup” means a procedure that provides a witness an opportunity to view a group of individuals or photographs of individuals to identify the individual committing the incident under investigation.
  - (b) “Lineup” includes a:
    - (i) Live lineup where individuals are observed by the witness; and
    - (ii) Photographic lineup where the witness observes photographs of individuals.
- (5) “Mug books” means a collection of photographs of individuals previously arrested.
- (6) “Show up identification” means a single individual is provided for a witness to view for the purpose of identification as a suspect in the investigation.
- (7) Witness.
  - (a) “Witness” means an individual, because of the individual’s proximity to or involvement in an incident, personally may:
    - (i) Identify another individual involved in an incident under investigation; or
    - (ii) Provide other information related to an incident under investigation.
  - (b) “Witness” includes a victim.

**.06 Responsibility/Procedure.**

A. Preliminary Information — Call-Taking.

- (1) The individual receiving a complaint alleging a violation under the authority of the IIU shall obtain and disseminate accurate preliminary information regarding:
  - (a) The alleged violation;

- (b) The individual alleged to have committed or is committing the violation;
  - (c) Weapons used;
  - (d) Vehicles involved; and
  - (e) Other relevant information that may be useful to investigating the alleged violation.
- (2) The manner in which information is solicited from a caller can significantly influence accuracy, therefore the individual receiving a call of an alleged violation, to the extent possible, shall:
- (a) Assure the caller the appropriate assistance is responding;
  - (b) When soliciting information, avoid asking suggestive or leading questions, for example, “Was the suspect’s hair brown?” and
    - (i) Ask open-ended questions, for example, “What can you tell me about the suspect?”;
    - (ii) Augment responses with closed-ended questions, for example, “What color was the suspect’s hair?”; and
    - (iii) Ask if there is other information that the caller can provide that was not covered;
  - (c) Accurately and objectively communicate available information to the responding investigator; and
  - (d) Accurately and objectively update the responding investigator with relevant information received subsequent to the initial notification.

**B. Preliminary Information — Responding Investigator.**

- (1) The responding investigator shall obtain, preserve, and use the maximum amount of accurate information available from the scene of the incident.
- (2) After securing the scene and attending to a victim and injured individuals, the responding investigator, to the extent possible, shall:
  - (a) Identify the suspect
  - (b) Determine what violation or crime occurred;
  - (c) Communicate new or updated information concerning the incident and suspect;
  - (d) Determine the location of the suspect;
  - (e) Detain or arrest the suspect if the suspect is present; and
  - (f) Locate and identify witnesses and if a witness is located:

- (i) Separate multiple witnesses; and
- (ii) Instruct the witness to avoid discussing details of the incident with other witnesses or the media or reviewing media accounts of the incident.

**C. Preliminary Information — Responding Investigator — Obtaining Witness Information.**

- (1) The manner and techniques that an investigator employs to obtain information from a witness has a direct impact on the amount and accuracy of information obtained, therefore an investigator shall collect and accurately document and preserve information from a witness.
- (2) When interviewing a witness, an investigator, to the extent possible, shall:
  - (a) Establish a rapport with the witness;
  - (b) Determine the witness' physical and emotional condition in relation to the ability to provide accurate and objective information;
  - (c) When soliciting information from a witness avoid asking suggestive or leading questions, for example, "Was the suspect's hair brown?" and
    - (i) Ask open-ended questions, for example, "What can you tell me about the suspect?";
    - (ii) Augment or clarify responses with closed-ended questions, for example, "What color was the suspect's hair?"; and
    - (iii) Ask if there is other information that the witness can provide that was not covered;
  - (d) Accurately detail statements obtained from a witness, including the witness' identity, in the procedural report;
  - (e) Encourage a witness to contact an investigator with relevant information available subsequent to the initial contact.

**D. Investigative Techniques — Witness Suspect Identification — Show up Identification.**

- (1) When an investigator is faced with an immediate need to identify an individual as a suspect, for example, if an individual is detained in close proximity (time and location) to the incident, the investigator may establish conditions for a witness to observe the individual for identification.
- (2) When conducting a show up identification, the investigator shall, to the extent possible, take steps to prevent prejudicing the witness by:
  - (a) Ensuring that the individual presented meets the documented description of the suspect previously provided by the witness;
  - (b) Transporting the witness to the location of the detained individual;
  - (c) If multiple witnesses are involved:

- (i) Separating witnesses;
  - (ii) Instructing each witness not to discuss details of the incident with other witnesses; and
  - (iii) If a witness identifies a suspect, using other identification procedures, for example, a lineup or mug book, for remaining witnesses; and
- (d) Cautioning the witness that the individual observed may or may not be the suspect.
- (3) If an investigator conducts a show up identification, the investigator shall document in the appropriate procedural report:
- (a) The circumstances that established the need for the show up identification;
  - (b) The time and location of the show up identification;
  - (c) The instructions given to each witness participating in the show up identification;
  - (d) The witness' own words concerning the certainty of the witness' identification or inability to identify the individual as the suspect.

**E. Investigative Techniques — Witness Suspect Identification — Lineup.**

- (1) An investigator using a lineup for a witness to identify a suspect shall objectively compose the lineup so as not to prejudice a witness by making the suspect unduly stand out from others in the lineup.
- (2) If an investigator is preparing a photographic lineup, the investigator, to the extent possible, shall:
  - (a) Include only one photograph of the suspect in the photograph array provided a witness;
  - (b) Except under §.06E(2)(c) of this procedure, select photographs of non-suspect individuals who generally fit the witness' personal description of the suspect;
  - (c) If the witness' description is incomplete or differs significantly from the suspect the witness is asked to identify, select non-suspect photographs that resemble the suspect;
  - (d) If multiple photographs of the suspect are available, select a photograph of the suspect that resembles the witness' description of the suspect at the time of the incident;
  - (e) Along with the suspect's photograph, use a minimum of five non-suspect photographs in a photographic lineup;
  - (f) Understand that complete uniformity of suspect features in non-suspect photographs is not required;

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- (g) Avoid using non-suspect photographs that so closely resemble the suspect that even an individual familiar with the suspect would find it difficult to distinguish the suspect's photograph from the non-suspect photographs;
  - (h) Create a consistent appearance between the suspect and non-suspect photographs with respect to unique or unusual features, such as scars, tattoos, or missing body parts; used by the witness to personally describe the suspect;
  - (i) Position the suspect's photograph randomly among the non-suspect photographs and if multiple witnesses are to view the photographic lineup, place the suspect's photograph in a different position among the non-suspect's photographs in each lineup;
  - (j) If there are multiple suspects for identification using the photographic lineup, when showing a new suspect's photograph, avoid using the non-suspect photographs used with a previous suspect for the same witness;
  - (k) Use photographs, suspect and non-suspect, in a manner that does not create for the witness the impression of previous arrest;
  - (l) Before displaying the photographic lineup to the witness, preview the photographs to ensure that the suspect photograph does not unduly stand apart from the non-suspect photographs;
  - (m) Preserve the photographic lineup as the photographic lineup was presented to the witness; and
  - (n) Preserve the original photographs used to compose the photographic lineup.
- (3) If an investigator is preparing a live lineup, the investigator, to the extent possible, shall meet applicable requirements under §§.06E(2)(a) — (n) of this procedure.
- (4) Before conducting a photographic or live lineup, the investigator shall instruct each witness participating in the lineup that:
- (a) The process includes viewing photographs (photographic lineup) or individuals (live lineup), either as a group or individually;
  - (b) If the lineup is conducted individually:
    - (i) The photographs or individuals shall be viewed one at a time with the current photograph or individual removed from view before presenting the next;
    - (ii) The photographs or individuals shall be presented in random order;
    - (iii) The witness may take as much time as needed to observe the photograph or individual before moving to the next; and
    - (iv) All photographs or individuals selected for the lineup shall be viewed even if identification is made before the witness has viewed all the photographs or individuals;

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- (c) The purpose of the lineup is to clear an individual as a suspect or identify a suspect in the investigation;
  - (d) Individuals in the lineup may not appear exactly as on the date of the incident because features such as head and facial hair are subject to change;
  - (e) The individual committing the crime may or may not be in the lineup;
  - (f) Placement in the lineup is selected randomly;
  - (g) The witness may take as much time as necessary to review the photographs or individuals, to make a decision;
  - (h) Regardless of whether identification is made, the investigation will continue to a proper conclusion;
  - (i) The procedure requires the investigator to ask that the witness states, in the witness' own words, how certain the witness is as to identification or lack of identification of a suspect;
  - (j) The witness may not prejudice other witnesses by discussing the lineup process, participants, or results with:
    - (i) Other potential witnesses; and
    - (ii) The media; and
  - (k) Confirm that the witness understands the purpose and procedures for the lineup.
- (5) When conducting the actual lineup, the investigator, to the extent possible, shall:
- (a) Avoid saying or making gestures and instruct others present not to make statements or gestures that may unfairly prejudice or otherwise influence the witness's ability to identify a suspect;
  - (b) Ensure that there are no indications made as to the order of the actual suspect in the lineup;
  - (c) If the photographs or individuals in the lineup are viewed by the witness individually:
    - (i) Begin the process with all photographs or individuals out of sight of the witness;
    - (ii) Display each photograph or individual separately in a predetermined order established randomly; and
    - (iii) Removing the current photograph or individual from sight of the witness before the next photograph or individual is presented for viewing;
  - (d) If photographs or individuals in the lineup are presented to the witness as a group:

- (i) Begin the process with all photographs or individuals out of sight of the witness; and
- (ii) Display the photographs or individual in an order established randomly;
- (e) If a live lineup is conducted, individually or as a group, and the lineup requires the individuals in the lineup to say or do something, ensure that each individual in a lineup says or performs the same action;
- (f) If the witness makes identification from the lineup, avoid advising the witness of the accuracy of the identification until the witness provides a recorded statement as to the witness' certainty of the identification or lack of identification;
- (g) Document the witness' statement, in the witness's own words, as to the certainty of the identification or the lack of identification;
- (h) Document the lineup in writing that, at a minimum, includes:
  - (i) The identity of each individual who photographically or personally was presented to the witness as part of the lineup;
  - (ii) The identity of each individual present during the lineup; and
  - (iii) The date, time, and location of the lineup; and
- (i) Photograph or video record the conduct of the actual lineup.

**F. Investigative Techniques — Witness Suspect Identification — Mug Book.**

- (1) An investigator may use properly constructed mug books to develop investigative leads to identify a suspect when other more reliable sources have been exhausted.
- (2) An investigator, to the extent possible, shall use a mug book that has been prepared objectively with photographs that are non-suggestive and:
  - (a) Grouped by format, for example, color or black and white; Polaroid, 35mm, or digital, or; video ensuring that no photograph unduly stands out from the others;
  - (b) Of individuals who are uniform with regard to general physical characteristics, for example, race, age, and sex;
  - (c) Grouped by type of crime, for example, sexual assault, or gang activity;
  - (d) The individual in each of the photographs used, is positively identified;
  - (e) The photographs used are reasonably contemporary; and
  - (f) Only includes one photograph of each individual in the mug book.



- (3) Before an investigator has a witness participate in reviewing a mug book to develop investigative leads to identify a suspect, the investigator, to the extent possible, shall:
  - (a) Provide instruction to each witness with no other witness present in the mug book process;
  - (b) Only refer to the mug book as a collection of photographs;
  - (c) Inform the witness that the individual committing the crime or violation may or may not be present in the collection of photographs;
  - (d) Consider suggesting that the witness think back to the incident and the witness' frame of mind at that time;
  - (e) Instruct the witness, if possible, to select a photograph of the individual that represents the suspect as remembered by the witness and, if a selection is made, state how the witness knows the individual selected;
  - (f) Inform the witness that regardless of the witness' ability to select a suspect from the collection of photographs, the investigation shall continue to a proper conclusion;
  - (g) Instruct the witness that the witness is required to state, in the witness' own words how certain the witness is of the identification or the lack of identification.
- (4) An investigator shall accurately document in the required procedural report:
  - (a) Details of how the mug book was prepared;
  - (b) Instructions provided the witness concerning the mug book process; and
  - (c) The results of the mug book process, including the witness' statement made concerning the witness':
    - (i) Certainty of a selection; or
    - (ii) Inability to make a selection.
- (5) If a witness makes a selection from the mug book process, the investigator shall document and preserve the mug book and related documents as evidence according to established procedures.

**G. Investigative Techniques — Witness Suspect Identification — Composite Images.**

- (1) An investigator may use properly constructed composite images along with other reliable investigative tools to develop investigative leads to identify a suspect when other more reliable sources have been exhausted.
- (2) An investigator may only use an individual trained and authorized to use the specific technique employed to develop a composite image based on witness information.

- (3) The individual preparing the composite image, to the extent possible, shall prepare the image representing the description provided by the witness by:
  - (a) Assessing the ability of the witness to provide a description of the suspect;
  - (b) Using the most effective technique available, for example, an artist, identikit-type, or computer-generated imaging technology;
  - (c) Unless the technique used require a witness to view photographs or other images, avoiding showing the witness photographs immediately prior to developing the composite image;
  - (d) Selecting an environment for conducting the procedure that minimizes distractions;
  - (e) If multiple witnesses, separately developing an individual composite image for each witness; and
  - (f) Once the composite image is prepared, determining from the witness providing the information used to create the image that the composite image is or is not a reasonable representation of the suspect.
- (4) Before an investigator has a witness participate in the composite image process to develop investigative leads to identify a suspect, the investigator, to the extent possible, shall:
  - (a) Provide instruction to each witness with no other witness present in the composite image process;
  - (b) Explain the type of composite technique used;
  - (c) Explain how the composite image is used in the investigation; and
  - (d) Consider suggesting that the witness think back to the incident and witness' frame of mind at that time.
- (5) An investigator shall accurately document in the required procedural report:
  - (a) Details of how the composite image was prepared;
  - (b) Instructions provided the witness concerning the composite image process;
  - (c) Identity and qualifications of the individual preparing the composite image; and
  - (d) The results of the composite image process, including the witness' statement made concerning the witness' certainty as to the composite image representing the suspect based on the description provided by the witness.
- (6) If a composite image is developed, the investigator shall document and preserve the composite image and related documents as evidence according to established procedures.

H. Investigative Techniques — Witness Suspect Identification — Documenting Identification.

- (1) When conducting an identification procedure, the investigator shall preserve the outcome of the procedure by documenting identification or lack of identification as it is stated by the witness.
- (2) When conducting an identification procedure, the investigator, to the extent possible, shall:
  - (a) Record either identification or the lack of identification in writing, including the witness' own words stating how certain the witness is about the outcome;
  - (b) Ensure the witness's statement is signed and dated by the witness making the statement;
  - (c) Ensure that no materials indicating previous identification results are visible to the witness; and
  - (d) Ensure that the witness does not write on or mark any materials to be used in another identification procedure.

I. Investigative Techniques — Witness Suspect Identification — Follow-up Interviews.

- (1) Pre-interview Preparations — General.
  - (a) An investigator preparing to conduct a follow-up interview with a witness shall review all available witness and case information in order to conduct a thorough and effective interview.
  - (b) Before conducting a follow-up interview with a witness, the investigator, to the extent possible, shall:
    - (i) Review available information relevant to the investigation;
    - (ii) Plan to conduct the interview as soon as the witness is physically and emotionally capable to objectively participate in the interview;
    - (ii) Select an environment for the interview that minimizes distractions while maintaining a suitable comfort level for the witness;
    - (iv) Ensure adequate resources are available, for example, notepad, tape recorder, camcorder, and interview room;
    - (v) Ensure witnesses are sequestered; and
    - (vi) Research a witness' previous involvement with law enforcement concerning the incident.
- (2) Pre-interview Preparations — Contact with the Witness.
  - (a) An investigator shall act in a manner conducive to eliciting the maxim accurate information from a witness.

- (b) When meeting with a witness arriving for a follow-up interview and before beginning the actual interview the investigator, to the extent possible, shall:
  - (i) Develop rapport with the witness;
  - (ii) Inquire about the nature of the witness' prior contact with law enforcement concerning the incident necessitating the follow-up interview;
  - (iii) Refrain from volunteering specific information about the suspect or investigation; and
  - (iv) Determine if the witness has discussed the incident or suspect information with another witness, other individuals, or media or viewed media accounts of the incident or suspect information.
- (3) Conducting the Follow-up Interview.
  - (a) When necessary, an investigator shall conduct a thorough interview of a witness and encourage post interview communication.
  - (b) During an interview an investigator, to the extent possible, shall:
    - (i) Encourage the witness to volunteer information without prompting;
    - (ii) Encourage the witness to report all details, even if they seem trivial;
    - (iii) Avoid asking suggestive or leading questions, for example, "Was the suspect's hair brown?";
    - (iv) Ask open-ended questions, for example, "What can you tell me about the suspect?";
    - (v) Augment responses with closed-ended questions, for example, "What color was the suspect's hair?";
    - (vi) Ask if there is other information that the witness can provide that was not covered;
    - (vii) Caution the witness not to guess;
    - (viii) Ask the witness to mentally recreate the circumstances of the event by thinking about the witness' feelings at the time of the incident;
    - (ix) Encourage the witness to use nonverbal communication, such as, drawings, gestures, or objects to assist the witness to provide accurate information;
    - (x) Avoid interrupting the witness;
    - (xi) Encourage the witness to contact investigators if additional information is recalled;
    - (xii) Avoid providing information or evidence obtained from other sources;

- (xiii) Instruct the witness to avoid discussing details of the incident with other potential witnesses;
  - (xiv) Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident; and
  - (xv) Thank the witness for cooperating with the investigation.
- (4) Documenting the Results of the Witness Follow-up Interview.
- (a) An investigator shall provide complete and accurate documentation of all information obtained from a witness.
  - (b) An investigator, to the extent possible, shall during or as soon as reasonably possible after an interview with a witness:
    - (i) Accurately document witness statements in writing or use audio or video recording, a stenographer, the witness' own written statement;
    - (ii) Review written documents or recordings with the witness; and
    - (iii) Offer the witness the opportunity to add, clarify, or edit the information provided and, accordingly document additions, clarification or edits as a part of the record.
- (5) Assessing Accuracy and Validity of Witness Information.
- (a) An investigator shall review the individual elements of a witness' statement to determine the accuracy and validity of each point.
  - (b) After conducting a witness interview, the investigator, to the extent possible, shall assess the accuracy and validity of information provided by the witness by reviewing each component of the witness' statement:
    - (i) Individually;
    - (ii) In the context of the entire statement to identify inconsistencies; and
    - (iii) In the context of other information and evidence available to the investigator from other sources.

**J. Investigative Techniques — Witness Suspect Identification — Future Witness Contact.**

- (1) An investigator shall maintain open communication with a witness to provide the opportunity for a witness to provide additional information.
- (2) After interviewing or involving a witness in an identification process, during the course of the continuing investigation, and, if appropriate, prosecution, an investigator, to the extent possible, shall maintain and encourage continued communication with a witness anticipating that new or additional information may become available from the witness.

**.07 Attachments.**

There are no attachments to this document.

**.08 History.**

This document supercedes any current IIU policy or procedure with which it may be in conflict.